

DANIELLE MARIE LUCEY,	)	3:04-cv-00637-BES-PAL
	)	
Plaintiff,	)	
	)	<b>ORDER</b>
v.	)	
	)	
THE CITY OF RENO, et al.,	)	
	)	
Defendants.	)	

## I. BACKGROUND

This case arises out of a domestic dispute that allegedly went above and beyond the normal course of such disagreements. Plaintiff and Defendant Michael Lucey ("Michael Lucey") were married on January 1, 1997, and during that marriage had two children. On November 12, 1999, Michael Lucey was hired by the City of Reno as a police officer and the

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1 the family moved to a single-family residence located at 7650 Badelona Court in Sparks,  
2 Nevada.

3 Beginning in 2001, Plaintiff and Michael Lucey began experiencing marital problems.  
4 In the summer of 2002, while Plaintiff and Michael Lucey were still married, Plaintiff began a  
5 relationship with a man by the name of David Duran ("Duran"). In August of 2002, Michael  
6 Lucey learned of that relationship by reading a letter Plaintiff had written to Duran and then  
7 thrown away. According to Plaintiff, "[f]rom the time he found the letter, Michael began  
8 threatening, harassing and intimidating both Dave and me in an apparent effort to force David  
9 and me to end our relationship." (Opposition to Defendant Michael Lucey's Motion for  
10 Summary Judgment (#166) at Exhibit A, p. 2). Plaintiff further stated that despite this, "I  
11 refrained from seeking a divorce from Michael immediately, and instead continued to live in  
12 the house with Michael and to see David for mental solace and comfort." Id.

13 After Michael Lucey learned about the relationship between Plaintiff and Duran, Michael  
14 Lucey ran a criminal history search on Duran at the Reno police station through NCIC while  
15 on duty. The search disclosed that Duran had convictions for DUI and gross destruction of  
16 property. Michael Lucey also obtained a booking photo and arrest report of Duran from the  
17 Washoe County Sheriff's office. According to Plaintiff, Michael showed her Duran's criminal  
18 record and another document modified to incorrectly reflect that Duran was a sex offender and  
19 a subject of the Reno Police Department's Repeat Offender Program ("ROP"). Michael Lucey  
20 claims, however, that he never created any false documents or told Plaintiff that Duran had  
21 a history of sex crimes or was a ROP subject. In addition to accessing Duran's criminal  
22 record, Michael Lucey also accessed DMV records on the vehicle jointly owned by Plaintiff and  
23 Michael Lucey. Michael Lucey also ran a DMV check on Duran's vehicle. Defendant Greg  
24 Martin ("Martin"), Michael Lucey's friend and co-worker, also accessed these DMV records at  
25 least once.

26 In August of 2003, while still a police officer, Michael Lucey obtained a protection order  
27 which provided that Duran was not to be within 100 yards of the Lucey residence at 7650  
28 Badelona Court. This protection order was extended until March 18, 2004. In October of

1 2003, during the divorce proceeding between Michael Lucey and Plaintiff, Michael Lucey was  
2 ordered to vacate the residence. After Michael Lucey moved out of the Badelona residence,  
3 he provided one of his neighbors, Defendant Greg Sawyer ("Sawyer") with a copy of the  
4 protection order that Michael Lucey had obtained against Duran. Sawyer was employed with  
5 the Washoe County Sheriff's Department at that time. Michael Lucey asked Sawyer to call  
6 either him or the police if Sawyer saw Duran around the Badelona residence.

7 On November 7, 2003, Sawyer called the police after seeing a man at the Badelona  
8 residence. According to Sawyer, he thought the man was a burglar. However, it turned out  
9 the man was Duran, who was taking food to Plaintiff because she was not feeling well. Duran  
10 had left the premises by the time the police arrived. On March 15, 2004, Sawyer again called  
11 the police, but this time because he saw Duran at the Badelona residence. According to  
12 Sawyer, he called 911 because he believed Duran was committing a felony by violating the  
13 protection order.

14 After Sawyer called 911, the Sparks police dispatcher called Michael Lucey to obtain  
15 information regarding the protection order. In response to an inquiry of whether Duran was  
16 armed, Michael Lucey reported to the dispatcher that Duran was known to carry a gun and had  
17 been previously escorted off Sparks Justice Court property for being aggressive and violent.  
18 Dispatch then informed one of the responding Sparks Police Department officers that the call  
19 had been upgraded to a high risk situation and that Duran was known to carry a weapon.  
20 When the Sparks police arrived at the residence, they had their guns drawn and one of the  
21 officers ordered Plaintiff and Duran out of the house. After exiting the house, Plaintiff was  
22 asked to sit on the curb and to remain there. Duran was arrested for violation of the protection  
23 order. According to Plaintiff, this incident caused her "gross humiliation and embarrassment."  
24 (Opposition to Defendant Michael Lucey's Motion for Summary Judgment (#166) at Exhibit A,  
25 p. 7). Plaintiff stated that she was forced "to parade down the street . . . where any neighbors  
26 or other persons who might have been present could watch, and they forced me to sit on a  
27 curb and told me I was not free to leave for a period of approximately one hour." Id.

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1 Prior to this incident with the Sparks police, Plaintiff had complained of Michael Lucey's  
2 harassing conduct to Sgt. Gerald Rhodes of the Reno Police Department's Internal Affairs  
3 division on September 30, 2003. In addition, Plaintiff alleged that she was being harassed and  
4 followed by other members of the Reno Police Department. According to Plaintiff, she "was  
5 persuaded that Michael was getting substantial help from other officers in trying to break up  
6 my relationship with David and in intimidating me." Id. at p. 3. Plaintiff's affidavit states that  
7 "[o]n what seemed to be a regular basis I noticed when I was driving I was followed by officers  
8 in Reno Police Department cars." Id. Plaintiff further alleges that on one day she "was pulled  
9 over without reason three times by different uniformed Reno police officers." Id. at 4. Further,  
10 Plaintiff alleges that Reno police had driven by Duran's house in marked patrol cars and had  
11 either honked their horns, waved, or shined a spotlight through the windows. Sgt. Rhodes  
12 investigated all of Plaintiff's complaints. (City of Reno and Jerry Hoover's Motion for Summary  
13 Judgment (#147) at Exhibit G). At the time of Sgt. Rhodes investigation, Michael Lucey was  
14 placed on administrative leave for a different internal affairs matter.

15 According to Sgt. Rhodes, his investigation resulted in a formal letter of reprimand to  
16 Defendant Martin for accessing DMV records for non-work related reasons. Id. at p. 2. Sgt.  
17 Rhodes stated that the rest of Plaintiff's allegations against Martin "were either unfounded,"  
18 or without "sufficient evidence." Id. Sgt. Rhodes further stated that had Michael Lucey not  
19 been terminated for different reasons, Sgt. Rhodes would have recommended discipline for  
20 Michael Lucey's improper conduct in accessing DMV records and obtaining Duran's criminal  
21 records and mug shot. Id. As for Plaintiff's claims of harassment and surveillance by other  
22 Reno police officers, Sgt. Rhodes stated he investigated these claims but "was unable to  
23 locate any evidence" that they had occurred. Id. at p. 9.

24 Following this, on September 16, 2005, Plaintiff filed an Amended Complaint (#75) in  
25 federal court against the Defendants asserting a variety of constitutional and state law claims.  
26 In her complaint, Plaintiff alleged three violations of 42 U.S.C. §1983, including a violation of  
27 her right to free association, the unlawful seizure of conversations, and unlawful arrest.  
28 Plaintiff also listed claims for conspiracy, custom and policy, abuse of process, invasion of

1 privacy, battery, trespass, intentional infliction of emotional distress and negligence. The  
 2 Defendants have filed motions for summary judgment on all these claims.

## 3 II. ANALYSIS

### 4 A. Legal Standard for Summary Judgment

5 Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers  
 6 to interrogatories, and admissions on file, together with the affidavits, if any, show that there  
 7 is no genuine issue as to any material fact and that the moving party is entitled to judgment  
 8 as a matter of law." Fed. R. Civ. P. 56(c). The burden of demonstrating the absence of a  
 9 genuine issue of material fact lies with the moving party, and for this purpose, the material  
 10 lodged by the moving party must be viewed in the light most favorable to the nonmoving party.  
 11 Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970); Martinez v. City of Los Angeles, 141  
 12 F.3d 1373, 1378 (9th Cir. 1998). A material issue of fact is one that affects the outcome of the  
 13 litigation and requires a trial to resolve the differing versions of the truth. Lynn v. Sheet Metal  
 14 Workers Int'l Ass'n, 804 F.2d 1472, 1483 (9th Cir. 1986); S.E.C. v. Seaboard Corp., 677 F.2d  
 15 1301, 1306 (9th Cir. 1982).

16 If the moving party presents evidence that would call for judgment as a matter of law  
 17 at trial if left uncontroverted, then the respondent must show by specific facts the existence  
 18 of a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986).  
 19 "[T]here is no issue for trial unless there is sufficient evidence favoring the nonmoving party  
 20 for a jury to return a verdict for that party. If the evidence is merely colorable, or is not  
 21 significantly probative, summary judgment may be granted." Id. at 249-50 (citations omitted).  
 22 "A mere scintilla of evidence will not do, for a jury is permitted to draw only those inferences  
 23 of which the evidence is reasonably susceptible; it may not resort to speculation." British  
 24 Airways Board v. Boeing Co., 585 F.2d 946, 952 (9th Cir. 1978); see also Daubert v. Merrell  
 25 Dow Pharmaceuticals, Inc., 509 U.S. 579, 596 (1993) ("[I]n the event the trial court concludes  
 26 that the scintilla of evidence presented supporting a position is insufficient to allow a  
 27 reasonable juror to conclude that the position more likely than not is true, the court remains  
 28 free . . . to grant summary judgment."). Moreover, "[i]f the factual context makes the non-

1 moving party's claim of a disputed fact implausible, then that party must come forward with  
2 more persuasive evidence than otherwise would be necessary to show there is a genuine  
3 issue for trial." Blue Ridge Insurance Co. v. Stanewich, 142 F.3d 1145, 1149 (9th Cir. 1998)  
4 (citing Cal. Architectural Bldg. Products, Inc. v. Franciscan Ceramics, Inc., 818 F.2d 1466,  
5 1468 (9th Cir. 1987)). Conclusory allegations that are unsupported by factual data cannot  
6 defeat a motion for summary judgment. Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).

7 **B. Defendant Balaam's Motion for Summary Judgment**

8 Plaintiff's Amended Complaint (#75) alleges several causes of action against Washoe  
9 County Sheriff Dennis Balaam ("Balaam"). These include allegations that Balaam engaged  
10 in a "Code of Solidarity," through which he established a custom and policy of constitutional  
11 violations. According to Plaintiff, "[t]here exists among personnel of the law enforcement  
12 communities of the City of Reno, the City of Sparks and the Washoe County Sheriff's Office,  
13 an unwritten 'Code of Solidarity.'" (Amendment Complaint (#75) at p. 11). Plaintiff alleges that  
14 under this Code of Solidarity a "significant number of sworn officers have agreed, as  
15 demonstrated by their conduct, to take actions, whether lawful or unlawful, against any and  
16 all persons who in any way, whether lawful or unlawful, invade, transgress against or otherwise  
17 act in derogation of the actual and perceived interests of any of the sworn officers." Id.  
18 Plaintiff states that it was through this Code of Solidarity that Balaam impaired the free  
19 exercise of Plaintiff's constitutional rights. Plaintiff also alleges claims for abuse of process  
20 and negligence against Balaam. In his Motion for Summary Judgment (#138), Balaam  
21 correctly notes that the Court already dismissed Plaintiff's custom and policy claim against all  
22 Defendants in an order dated September 15, 2005. (Order (#74) at p. 9). Moreover, that order  
23 recharacterized Plaintiff's negligence claim as one for failure to train and for damages under  
24 section 1983. Id.

25 Balaam argues that he is entitled to summary judgment on Plaintiff's claims against him  
26 because Plaintiff has provided no evidence to sustain such claims. According to Balaam,  
27 "absolutely no facts were discovered or disclosed . . . to support any of the allegations" in

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1 Plaintiff's complaint. (Defendant Balaam's Motion for Summary Judgment (#138) at p. 7).  
2 Plaintiff did not file an opposition to Balaam's Motion for Summary Judgment.

3 Local Rule 7-2(d) provides that "[t]he failure of an opposing party to file points and  
4 authorities in response to any motion shall constitute a consent to the granting of the motion."  
5 However, "a nonmoving party's failure to comply with local rules does not excuse the moving  
6 party's affirmative duty under rule 56 to demonstrate its entitlement to judgment as a matter  
7 of law." See Martinez v. Stanford, 323 F.3d 1178, 1182 (9<sup>th</sup> Cir. 2003) (citing Fed. R. Civ. P.  
8 56).

9 The Court has fully considered Defendant Balaam's Motion for Summary Judgment,  
10 the evidence presented, and applicable law. Balaam has affirmatively demonstrated his  
11 entitlement to summary judgment by showing that there is no genuine issue of material fact  
12 and he is entitled to judgment as a matter of law as to Plaintiff's claims made against him. As  
13 such, Defendant Balaam's Motion for Summary Judgment (#138) is granted.

14 **C. Defendant Sawyer's Motion for Summary Judgment**

15 The claims alleged against Defendant Sawyer in Plaintiff's Amended Complaint include  
16 both allegations of 42 U.S.C. § 1983 violations, as well as various state law claims. Sawyer  
17 has sought summary judgment on all of the claims alleged against him on the basis that "there  
18 is no evidence upon which a jury could reasonably find in favor of Plaintiff with respect to any  
19 of the claims." (Motion for Summary Judgment of Defendant Greg Sawyer (#134) at p. 10).

20 1. Free Association Claim.

21 Plaintiff's first claim against Sawyer is for a violation of Plaintiff's constitutional right to  
22 free association under 42 U.S.C. § 1983. (Amended Complaint (#75) at p. 11). According to  
23 the Amended Complaint, Plaintiff had a constitutional right to associate with Duran and  
24 Sawyer, acting under color of state law, violated that right by taking actions which "chilled" that  
25 relationship. Id. at p. 12.

26 To state a claim under 42 U.S.C. § 1983, a plaintiff must prove that there was a  
27 deprivation of a right secured by the Constitution or laws of the United States, and that the

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1 alleged deprivation or violation was committed by a person acting under the color of State law.  
2 Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9<sup>th</sup> Cir. 2006).

3 The First Amendment "encompasses a freedom of association right, which includes the  
4 freedom of intimate expression and the right to associate with others in activities otherwise  
5 protected by the First Amendment." Dible v. City of Chandler, 515 F.3d 918, 929 (9<sup>th</sup> Cir.  
6 2008). According to the Ninth Circuit, "[t]he Constitution protects associations because of their  
7 intrinsic value as well as their value as instrumentalities for achieving certain ends." IDK, Inc.  
8 v. Clark County, 836 F.2d 1185, 1191 (9<sup>th</sup> Cir. 1988). In protecting "certain kinds of highly  
9 personal relationships," the United States Supreme Court has most often identified the source  
10 of the protection as the due process clause of the Fourteenth Amendment, rather than the  
11 First Amendment's freedom to assemble. Roberts v. United States Jaycees, 468 U.S. 609,  
12 618 (1984).

13 "The relationships protected by the fourteenth amendment 'are those that attend the  
14 creation and sustenance of a family' and similar 'highly personal relationships.'" IDK, Inc., 836  
15 F.2d at 1193 (quoting Roberts, 468 U.S. at 618-19). The Ninth Circuit has characterized this  
16 type of relationship as one in which "[t]he individuals are deeply attached and committed to  
17 each other as a result of their having shared each other's thoughts, beliefs, and experiences."  
18 Id. "The factors relevant in determining whether a particular association can claim the  
19 protection of the due process clause are the group's size, its congeniality, its duration, the  
20 purposes for which it was formed, and the selectivity in choosing participants." Id.

21 In a previous order entered in this case, the Court stated that it believed "that a dating  
22 relationship is one worthy of protection under the intimate personal relationship line of freedom  
23 of association cases." (Order (#74) at p. 4). As such, for purposes of this motion, the dating  
24 relationship between Plaintiff and Duran was entitled to protection under the fourteenth  
25 amendment.

26 Sawyer has moved for summary judgment on this claim on the basis that Plaintiff and  
27 Duran had ended their dating relationship at the time Sawyer allegedly violated Plaintiff's  
28 constitutional rights. As such, they had no relationship that was entitled to protection at that

1 time. Moreover, Sawyer contends that he did not do anything under color of law to deprive  
2 Plaintiff of her right to freely associate with Duran. In her Opposition, Plaintiff states that  
3 Sawyer violated her constitutional rights by assisting Michael Lucey in harassing and stalking  
4 her. Specifically, Plaintiff alleges that Sawyer's "assistance consisted mostly of eavesdropping  
5 on the plaintiff, Danielle Lucey, reporting her telephone conversations to others, and wrongfully  
6 triggering her arrest by Sparks police on March 15, 2004." Id.

7 Plaintiff's eavesdropping claim against Sawyer is based on a baby monitor she saw in  
8 a window of Sawyer's home. (Motion for Summary Judgment of Defendant Greg Sawyer  
9 (#134) at Exhibit 1). According to Plaintiff's deposition, the only personal knowledge she had  
10 that Sawyer was allegedly eavesdropping on her telephone conversations was "that they had  
11 a baby monitor in their window that then they – I have hearsay knowledge because they told  
12 people about it and also, that personal things that I said on my phone, that no one would know  
13 about would get reported back to Mike."<sup>1</sup> Id. Plaintiff has provided no other evidentiary  
14 support for her claim that Sawyer was eavesdropping on her conversations. In fact, in her  
15 Opposition she states that "except by inference by coincidence," she cannot "negate Deputy  
16 Sawyer's statements" that he did not eavesdrop on Plaintiff. Thus, Sawyer's evidence that he  
17 did not eavesdrop on Plaintiff is uncontroverted. In addition, the location of a baby monitor in  
18 a home with young children is insufficient evidence to warrant an inference that Sawyer was  
19 listening in on Plaintiff's telephone conversations over such monitor. As such, this claim  
20 cannot form the basis of Plaintiff's free association violation.

21 Plaintiff also alleges that Sawyer violated her right to free association by wrongfully  
22 triggering her arrest on March 15, 2004, when Sawyer called the Sparks police when he saw  
23 Duran at the Badelona residence. This Court finds this claim without merit. Notably, there  
24 was a protection order in place when Sawyer called the Sparks police. Sawyer did not  
25 participate in the alleged arrest, nor did he take any action after he called the police to the

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27 <sup>1</sup> Both Plaintiff and Sawyer testified that at the time she saw the baby monitor, Sawyer had  
28 young children living in the home. Id. Plaintiff also stated that Sawyer told one of their neighbors, who  
then told another neighbor, who then told her that Sawyer could hear her phone conversations over the  
baby monitor. Id.

1 scene. Second, Plaintiff has not provided any evidence she was arrested on March 15, 2004.  
2 Rather, the Sparks police, in securing the scene, had Plaintiff sit on the curb outside of her  
3 house. Duran, on the other hand, was later arrested for violation of the protection order.

4 Based on the foregoing, Sawyer is entitled to summary judgment on this claim. Plaintiff  
5 has failed to establish any facts to support her free association claim. Moreover, as noted by  
6 the Plaintiff in her Opposition, she cannot dispute Sawyer's statement of facts, but, rather,  
7 must rely on an "inference" based on "coincidence." However, "[a] mere scintilla of evidence  
8 will not do, for a jury is permitted to draw only those inferences of which the evidence is  
9 reasonably susceptible; it may not resort to speculation." British Airways Board, 585 F.2d at  
10 952. In this case, Plaintiff has not come forward with evidence sufficient to show a genuine  
11 issue of material fact and Sawyer is entitled to summary judgment on this claim.

12 2. Unlawful Seizure of Conversation.

13 In addition to alleging a violation of her right to free association, Plaintiff has also  
14 brought a claim against Sawyer for the unlawful seizure of conversation. According to Plaintiff,  
15 her "conversations were seized and intercepted by Deputy Sawyer through the use of the  
16 remote electronic listening devices that he used to monitor [Plaintiff's] conversation with Mr.  
17 Duran." (Amended Complaint (#75) at p. 13). This claim for relief is based on the same facts  
18 as Plaintiff's allegation of eavesdropping discussed in the foregoing. As noted in that  
19 discussion, Plaintiff's only factual support for this allegation is that she saw a baby monitor in  
20 Sawyer's house.<sup>2</sup> Plaintiff has provided no other factual support for this claim. Based on  
21 these facts, Plaintiff has failed to produce sufficient evidence to support a claim for unlawful  
22 seizure of conversation. As such, Sawyer is entitled to summary judgment on this claim.

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27 <sup>2</sup> Plaintiff also stated that she heard from a neighbor that Sawyer had told another neighbor that  
28 the baby monitor could pick up Plaintiff's telephone conversations. However, double hearsay cannot  
be considered on a motion for summary judgment. Winkler v. National Union Fire Ins. Co., 930 F.2d  
1364, 1367 n.4 (9<sup>th</sup> Cir. 1991).

1           3.     Unlawful Arrest.

2           Plaintiff's final constitutional claim against Sawyer is for unlawful arrest. This claim  
3 stems from the incident that occurred at the Badelona residence after Sawyer called the  
4 Sparks police when he saw Duran at the Badelona residence in violation of a protection order.

5           In order to bring a claim for unlawful arrest, the plaintiff must prove that an arrest  
6 occurred and that the arresting officers lacked probable cause or other justification for the  
7 arrest. Dubner v. San Francisco, 266 F.3d 959 (9<sup>th</sup> Cir. 2001). As noted in the previous  
8 section, a protection order was in place when Sawyer called the Sparks police department.  
9 Moreover, Plaintiff was not arrested at that time. The Sparks police, responding to the call,  
10 made Plaintiff and Duran exit the residence, and then made Plaintiff sit on a curb while they  
11 processed and secured the scene. Plaintiff has not provided any evidence that she was  
12 arrested or that the officers lacked justification for their conduct.

13           Based on the foregoing, Plaintiff has provided no factual support for her claim of  
14 unlawful arrest. As such, Sawyer is entitled to summary judgment on that claim.

15           4.     Conspiracy.

16           Plaintiff also alleges that Sawyer engaged in a conspiracy with Michael Lucey and  
17 Defendant Martin "under color of lawful authority" for the purpose of committing various "illicit"  
18 acts. Specific to Sawyer is the allegation that he engaged in a conspiracy "to monitor personal  
19 and telephone conversations between [Plaintiff] and Mr. Duran through the use of electronic  
20 eavesdropping devises." (Amended Complaint (#75) at p. 15).

21           "An actionable conspiracy consists of a combination of two or more persons who, by  
22 some concerted action, intend to accomplish an unlawful objective for the purpose of harming  
23 another, and damage results from the act or acts." Hilton Hotels Corp. v. Butch Lewis  
24 Productions, Inc., 109 Nev. 1043, 1048, 862 P.2d 1207, 1210 (Nev. 1993). It appears from  
25 Plaintiff's Amended Complaint that the "unlawful objective" in regard to her claim against  
26 Sawyer is her allegation that he monitored her conversations with an "electronic  
27 eavesdropping devise[]."   
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1 Sawyer's Motion for Summary Judgment on this claim is granted. Plaintiff has failed  
 2 to produce any evidence in support of this claim for relief. Specifically, Plaintiff has provided  
 3 no factual support that Sawyer intended some "unlawful objective." As noted in the foregoing,  
 4 Plaintiff has provided no evidence that Sawyer eavesdropped on her telephone conversations  
 5 or triggered her unlawful arrest. Because she has provided no evidence of an unlawful  
 6 objective, her conspiracy claim must fail. As such, Sawyer is entitled to summary judgment  
 7 on this claim.

8 5. Trespass.

9 Plaintiff's Amended Complaint asserts a cause of action for trespass against Sawyer.  
 10 Sawyer has sought summary judgment on this claim. In her Opposition, Plaintiff states that  
 11 she "does not oppose summary judgment for Deputy Sawyer" on her trespass claim. As such,  
 12 Sawyer's Motion for Summary Judgment on this claim is granted.

13 6. Remaining State Law Claims.

14 The remaining state law claims asserted against Sawyer are dismissed pursuant to 28  
 15 U.S.C. §1367(c). The Court declines to exercise its supplemental jurisdiction over these  
 16 claims.

17 Based on the foregoing, Defendant Sawyer's Motion for Summary Judgment is granted  
 18 as to all federal claims alleged against him. In addition, he is entitled to summary judgment  
 19 on the claims of conspiracy and trespass. All remaining state law claims are dismissed.

20 **D. Defendants City of Sparks, John Dotson and Unnamed Sparks Police Officers'**  
 21 **Motion for Summary Judgment**

22 Plaintiff has asserted various claims against Defendants City of Sparks, John Dotson  
 23 and Unnamed Sparks Police Officers in her Amended Complaint (#75).<sup>3</sup> Specifically, Plaintiff  
 24 alleges a claim for relief against Sparks Chief of Police John Dotson ("Dotson") for unlawful  
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26 <sup>3</sup> Plaintiff's Opposition to Defendants City of Sparks, John Dotson and Unnamed Sparks Police  
 27 Officers states that Plaintiff does not oppose summary judgment as to the Unnamed Sparks Police  
 28 Officers. (Opposition (#168) at p. 3). Specifically, Plaintiff states that since the unnamed officers "have  
 not been identified and served . . . summary judgment for those persons and them alone is not opposed  
 herein." Id. As such, summary judgement is granted to Defendants Unnamed Sparks Police Officers.

1 arrest, custom and policy, abuse of process, and negligence. The only claim alleged against  
2 Defendant City of Sparks is for custom and policy. However, as noted in the foregoing, the  
3 Court already dismissed Plaintiff's custom and policy claim against all Defendants in an order  
4 dated September 15, 2005. (Order (#74) at p. 9). As such, the Defendant City of Sparks and  
5 Defendant Dotson are entitled to summary judgment on that claim.

6 Defendant Dotson argues that he is entitled to summary judgment on the claims made  
7 against him because "[d]iscovery did not bear out any of the plaintiff's allegations of  
8 misconduct" against him. (Motion for Summary Judgment on Behalf of Defendants City of  
9 Sparks, John Dotson and Unnamed Sparks Police Officers (#139) at p. 3). According to  
10 Plaintiff, "the crux of the case against John Dotson" is that he was "aware of and encouraged  
11 [his] officers to assist each other personally, whether lawfully or otherwise, in disputes against  
12 persons who were not members of law enforcement agencies." (Opposition to Defendants  
13 City of Sparks, John Dotson and Unnamed Sparks Police Officers Motion for Summary  
14 Judgment (#168) at pp. 3-4).

15 1. Unlawful Arrest.

16 Plaintiff's first claim for relief against Dotson is for unlawful arrest arising from the  
17 incident that occurred on March 15, 2004, at the Badelona residence. This incident arose after  
18 Defendant Sawyer called the Sparks police department when he saw Duran at the residence  
19 in violation of a protection order.

20 In order to bring a claim for unlawful arrest, the plaintiff must prove that an arrest  
21 occurred and that the arresting officers lacked probable cause or other justification for the  
22 arrest. Dubner, 266 F.3d at 959. As noted when discussing Defendant Sawyer's Motion for  
23 Summary Judgment, this claim is without merit because Plaintiff has not provided any  
24 evidence that she was arrested on March 15, 2004. Plaintiff was forced to exit her house and  
25 to remain seated on a curb while the officers secured the scene. Moreover, the officers had  
26 justification for their action because Duran was in violation of a valid protection order at that  
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1 time.<sup>4</sup> Because Plaintiff has not provided any evidence that she was arrested or that the  
2 Sparks police acted without justification, summary judgment is appropriate.

3 Based on the foregoing, Dotson is entitled to summary judgment on this claim.

4 2. Abuse of Process.

5 Plaintiff alleges that Dotson is liable for abuse of process because of the actions taken  
6 by the Sparks police department on March 15, 2004. (Amended Complaint (#75) at pp. 17-  
7 18). According to Plaintiff, the protection order was "valid in form only" and the Sparks police  
8 department should have known that "its purpose had terminated due to changed  
9 circumstances." Id. at p. 18. Further, Plaintiff alleges that Dotson is liable for such conduct  
10 "in keeping with the Code of Solidarity." Id.

11 Defendant Dotson is entitled to summary judgment on this claim. First, Plaintiff has  
12 provided no evidence that the Sparks police department acted unlawfully on March 15, 2004.  
13 Plaintiff acknowledges that the Sparks police department did not know of any "defects" in the  
14 protection order. Second, Plaintiff has provided no evidence that Defendant Dotson engaged  
15 in a "Code of Solidarity" to "use invalid legal process[es] to embarrass, inconvenience and  
16 punish" Plaintiff. (See Amended Complaint (#75) at p. 18). Rather, the uncontroverted  
17 evidence proffered by Dotson was that he was unfamiliar with any "Code of Solidarity," and  
18 that he had never participated in such a scheme. (Motion for Summary Judgment on Behalf  
19 of Defendants City of Sparks, John Dotson and Unnamed Sparks Police Officers (#139) at  
20 Exhibit 4).

21 Because Plaintiff has not provided any evidence to support this claim, Defendant  
22 Dotson is entitled to summary judgment.

23 3. Negligence.

24 The final claim asserted against Dotson is for negligence. In the Court's Order of  
25 September 15, 2005, the Court recharacterized this claim as one for "monetary damages  
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27 <sup>4</sup> Plaintiff noted in her Opposition: "Based on the fruits of discovery, no evidence can be offered  
28 that the Sparks Police Department or any of its personnel knew of or had reason to know of any defects  
in the stay-away order against Duran." (Opposition (#168) at p. 6).

1 under section 1983." (Order (#74) at p. 10). According to Plaintiff, Defendant Dotson is liable  
 2 under this claim because he "acted with deliberate indifference toward [Plaintiff] in failing,  
 3 refusing and omitting to properly supervise, and to curb misconduct" on the part of unidentified  
 4 Sparks police officers in their contacts with Plaintiff. (Amended Complaint (#75) at p. 22).

5 "A supervisor can be liable under section 1983 if he 'sets in motion a series of acts by  
 6 others . . . , which he knew or reasonably should have known, would cause others to inflict the  
 7 constitutional injury.'" Motley v. Parks, 383 F.3d 1058, 1067 (9<sup>th</sup> Cir. 2004)(quoting Graves v.  
 8 City of Coeur D'Alene, 339 F.3d 828, 848 (9<sup>th</sup> Cir. 2003)). Dotson is entitled to summary  
 9 judgment on this claim for two reasons. First, Plaintiff has failed to provide any factual support  
 10 for her contention that the Sparks police department violated her constitutional rights. As  
 11 noted in the foregoing, her unlawful arrest claim must fail because she was never arrested on  
 12 March 15, 2004. Second, Plaintiff has failed to provide any factual support that Dotson "set  
 13 in motion a series of acts" which he knew or should have known would inflict a constitutional  
 14 injury. The only contention Plaintiff makes in this regard is that Dotson was part of a "Code  
 15 of Solidarity." However, Plaintiff provides no evidence for this Code of Solidarity and such  
 16 allegation is directly refuted by Dotson's affidavit. (Motion for Summary Judgment on Behalf  
 17 of Defendants City of Sparks, John Dotson and Unnamed Sparks Police Officers (#139) at  
 18 Exhibit 4).

19 Thus, based on the foregoing, the Motion for Summary Judgment on behalf of  
 20 Defendants City of Sparks, John Dotson and Unnamed Sparks Police Officers is granted.

#### 21 **E. Defendant Greg Martin's Motion for Summary Judgment**

22 There are four claims alleged against Martin. These include a violation of Plaintiff's  
 23 right to free association, conspiracy, invasion of privacy and intentional infliction of emotional  
 24 distress.<sup>5</sup> Martin has moved for summary judgment on all the claims alleged against him

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 27 <sup>5</sup> In her Opposition, Plaintiff states that she does not oppose summary judgment on the invasion  
 28 of privacy claim. (Plaintiff's Opposition to Defendant Greg Martin's Motion for Summary Judgment  
 (#169) at p. 6). As such, summary judgment on that claim is granted.

1 asserting that "Plaintiff simply has no evidence to support her claims." (Motion for Summary  
2 Judgment (#140) at p. 5).

3 1. Free Association and Conspiracy Claims.

4 As to the free association and conspiracy claims, Martin states that "there is no proof  
5 of any actions taken by [him] under color of law." Id. In Plaintiff's Opposition, Plaintiff states  
6 that Martin was a work partner of Michael Lucey and that Martin "understood that [Plaintiff] was  
7 a young woman with two small children caught up in a failing and hurtful marital relationship."  
8 (Opposition to Defendant Greg Martin's Motion for Summary Judgment (#169) at p. 5).  
9 According to Plaintiff, Martin "sided with Officer Lucey [and] [i]n so doing, insofar as obtaining  
10 records is concerned, he put himself in the shoes of a state actor." Id. Specifically, Plaintiff  
11 contended that Martin "availed himself to state facilities" for "impermissible purposes." Id.

12 As discussed previously, to recover damages under section 1983, a plaintiff must prove  
13 that the defendant deprived the plaintiff of a constitutional right while acting under color of  
14 state law. Tatum v. City and County of San Francisco, 441 F.3d 1090, 1094 (9<sup>th</sup> Cir. 2006).  
15 In this case, Plaintiff argues that Martin violated her right to free association. According to the  
16 Amended Complaint, the actions taken by Martin included running a vehicle record check on  
17 Duran's vehicle and "presumably" taking illicit surveillance photographs of Plaintiff. (Amended  
18 Complaint (#75) at pp. 5-7). In addition, Plaintiff states that Martin went with Michael Lucey  
19 to the Badelona residence while Duran and Plaintiff were there. Id. at p. 8. According to  
20 Plaintiff, Michael Lucey got physical and Martin "was compelled to restrain" him. Id.

21 As to the last two claims, Plaintiff has provided no factual evidence that Martin was  
22 acting under color of state law when he went to the Badelona residence or allegedly conducted  
23 surveillance on her. Further, Plaintiff has failed to provide any evidence that such alleged  
24 conduct violated her right to free association with Duran. According to Plaintiff's deposition,  
25 at the time Michael Lucey and Martin went to the Badelona residence, Michael Lucey was still  
26 living there. (Deposition of Danielle Marie Fargo, December 12, 2005 attached as Exhibit 1-A  
27 to City of Reno and Jerry Hoover's Motion for Summary Judgment (#147)). Further, neither  
28 Michael Lucey nor Martin were in uniform at that time and Martin testified that he was off-duty

1 when that event took place. Finally, Plaintiff has not alleged that Martin did anything unlawful  
2 while at the Badelona residence. Rather, she asserts that Martin was compelled to restrain  
3 Michael Lucey when he began to get physically violent. As for Plaintiff's allegation that Martin  
4 was following her, in her deposition she stated that she had no details regarding that alleged  
5 surveillance, but, rather, was "under the impression" it was going on. Id. In fact, Plaintiff  
6 affirmatively stated that she never saw Martin following her. Id. Martin testified that he did not  
7 follow Plaintiff, but that he did actually drive by Duran's residence on two separate occasions.  
8 (Deposition of Gregory Hunter Martin, January 8, 2007 attached as Exhibit D to City of Reno  
9 and Jerry Hoover's Motion for Summary Judgment (#147)). The first time was when he was  
10 on patrol and responded to a call about shots being fired from an apartment complex next door  
11 to Duran's residence. Id. The second time was with his family after they left a dental office  
12 down the street from Duran's residence. While driving on Duran's street, Martin saw Plaintiff's  
13 car and took a picture. Id. Plaintiff has not provided any evidence that either of these events  
14 were unlawful or violated her constitutional rights. Moreover, Martin was clearly not acting  
15 under color of state law when he took a picture of Plaintiff's car while driving with his family  
16 from a dentist appointment. As such, neither of these actions can form the basis for her  
17 constitutional claims against Martin.

18 Plaintiff has also alleged that Martin violated her right to free association by running a  
19 vehicle record report on Duran's vehicle. Martin was formally reprimanded for this action by  
20 the City of Reno police department. Although Martin may have been acting under color of law  
21 at the time he ran the vehicle record report on Duran's vehicle, Plaintiff has failed to show any  
22 evidence or factual support that the running of such record violated her constitutional right to  
23 free association with Duran. In fact, Plaintiff did not learn that Martin had run a vehicle record  
24 check on Duran until after the internal affairs investigation began and her dating relationship  
25 with Duran was over. (Deposition of Danielle Marie Fargo, January 5, 2007, p. 159, attached  
26 as Exhibit A-2 to City of Reno and Jerry Hoover's Motion for Summary Judgment (#147)).

27 Thus, based on the foregoing, Martin's Motion for Summary Judgment as to Plaintiff's  
28 free association claim is granted. Furthermore, because his alleged unconstitutional conduct

1 was the basis of her conspiracy claim against him, Martin is also entitled to summary judgment  
2 on that claim.

3 2. Intentional Infliction of Emotional Distress Claim.

4 The remaining state law claim of intentional infliction of emotional distress asserted  
5 against Martin is dismissed pursuant to 28 U.S.C. §1367(c). The Court declines to exercise  
6 its supplemental jurisdiction over this claim.

7 Based on the foregoing, Defendant Martin's Motion for Summary Judgment is granted  
8 as to the section 1983 free association claim, conspiracy claim and the invasion of privacy  
9 claim. The remaining claim of intentional infliction of emotional distress is dismissed.

10 **F. Defendants City of Reno and Jerry Hoover's Motion for Summary Judgment**

11 Plaintiff has asserted a claim of unlawful custom and policy against the Defendant City  
12 of Reno and former Reno Police Chief Jerry Hoover ("Hoover"). (Amended Complaint (#75)  
13 at p. 16). In addition, against Hoover, Plaintiff has asserted claims for abuse of process and  
14 negligence. As noted, the Court has already dismissed the custom and policy claim against  
15 all Defendants. (Order (#74) at p. 9). In addition, Plaintiff does not oppose granting Hoover  
16 summary judgment on the abuse of process claim. (Opposition to Defendants City of Reno  
17 and Jerry Hoover's Motion for Summary Judgment (#170) at p. 6). As such, the only  
18 remaining claim is for negligence against Hoover.

19 In the Court's Order of September 15, 2005, the Court recharacterized Plaintiff's  
20 negligence claim as one for "monetary damages under section 1983." (Order (#74) at p. 10).  
21 According to Plaintiff, Hoover is liable under this claim because he supported a "Code of  
22 Solidarity" in which he "acted with deliberate indifference" toward Plaintiff "in failing, refusing  
23 and omitting to properly supervise, and to curb the misconduct" by Michael Lucey and  
24 Defendant Martin. (Amended Complaint (#75) at p. 22). Specifically, Plaintiff states that  
25 Hoover was "aware of and encouraged [his] officers to assist each other personally, whether  
26 lawfully or otherwise, in disputes against persons who were not members of law enforcement  
27 agencies." (Opposition to Defendants City of Reno and Jerry Hoover's Motion for Summary  
28 Judgment (#170) at p. 3).

1 Hoover argues that he is entitled to summary judgment on this claim because there is  
2 "no evidence of negligence on his part" and Plaintiff "can point to no wrongful conduct." (City  
3 of Reno and Jerry Hoover's Motion for Summary Judgment (#147) at pp. 19-20). Specifically,  
4 Hoover's affidavit states that he "never turned a blind eye or encouraged officers to commit  
5 unlawful acts." (Affidavit of Jerry Hoover at p. 2, attached as Exhibit F to City of Reno and  
6 Jerry Hoover's Motion for Summary Judgment (#147)). Further, Hoover's affidavit affirmatively  
7 states that at no time did he encourage, approve, condone or ratify any wrongful conduct by  
8 Officer Martin or Michael Lucey. Id. In response, Plaintiff does not provide any evidentiary  
9 support for her position, but merely asserts that she "believed she was the victim of a general  
10 police practice in which officers informally helped each other out and covered up each other's  
11 transgressions." (Opposition to Defendants City of Reno and Jerry Hoover's Motion for  
12 Summary Judgment (#170) at p. 5).

13 Based on the foregoing, Hoover's Motion for Summary Judgment is granted. Plaintiff  
14 has provided no evidence or factual support that Hoover engaged in misconduct or negligence  
15 in this matter. In fact, the evidence to the contrary is uncontroverted. Plaintiff's only factual  
16 support for her claim against Hoover is her "belief" that she was the victim of unlawful police  
17 practices. This is not sufficient to create a genuine issue of fact.

18 Based on the foregoing, Defendants City of Reno and Hoover's Motion for Summary  
19 Judgment is granted.

20 **G. Defendant Michael Lucey's Motion for Summary Judgment.**

21 Defendant Michael Lucey has moved for summary judgment on the eleven claims for  
22 relief asserted against him in Plaintiff's Amended Complaint. These claims for relief include  
23 three 42. U.S.C. § 1983 claims as well as various state law claims.

24 1. Free Association Claim.

25 Plaintiff argues that Michael Lucey's alleged misconduct violated her constitutional right  
26 to free association. Specifically, Plaintiff asserts that while acting under color of state law,  
27 Michael Lucey engaged in conduct designed to "chill" and disrupt her relationship with Duran.  
28 In his Motion for Summary Judgment, Michael Lucey argues that he is entitled to summary

1 judgment on Plaintiff's constitutional claims because Plaintiff has not presented "any evidence  
2 that any of his acts which are alleged to have violated her civil rights were done 'under color  
3 of law.'" (Defendant Michael Lucey's Motion for Summary Judgment (#148) at p. 7). Rather,  
4 Michael Lucey argues that Plaintiff brought constitutional claims against him solely because  
5 at the time of their marital discord Michael Lucey was a police officer. Id. Plaintiff, on the  
6 other hand, argues that Michael Lucey was "acting officially as a police officer" when he used  
7 "police facilities to run background checks on" Duran. (Opposition to Defendant Michael  
8 Lucey's Motion for Summary Judgment (#166) at p. 6).

9 To sustain a claim under section 1983, a plaintiff must prove that there was a  
10 deprivation of a right secured by the Constitution or laws of the United States, and that the  
11 alleged deprivation or violation was committed by a person acting under the color of State law.  
12 Long, 442 F.3d at 1185. The constitutional right at issue in this matter is Plaintiff's right to  
13 freely associate with Duran.<sup>6</sup>

14 It is not disputed that Michael Lucey was a police officer at the time the alleged events  
15 occurred in this case. In addition, Michael Lucey admitted he ran a criminal history search on  
16 Duran at the Reno police station through NCIC while on duty. (Deposition of Michael Lucey,  
17 January 4, 2007, at pp. 12-14, attached as Exhibit C to City of Reno and Jerry Hoover's Motion  
18 for Summary Judgment (#147)). In addition, Michael Lucey admitted that he obtained a  
19 booking photo (mug shot) and arrest report of Duran from the Washoe County Sheriff's office  
20 while he was on duty. Id. at pp. 12-18. Finally, Michael Lucey admitted that he ran a

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24 <sup>6</sup> Plaintiff's freedom of association claim against Michael Lucey brings up an interesting  
25 constitutional question that neither side addressed or briefed. The alleged unconstitutional conduct by  
26 Michael Lucey occurred while he was still married to and living with Plaintiff. As such, Plaintiff's  
27 freedom of association claim alleges that her then-husband violated her constitutional right to associate  
28 with a man with whom she was having an extra-marital affair. As previously noted, the type of  
relationships protected by the fourteenth amendment's freedom of association are those that attend the  
creation and sustenance of a family. See IDK, Inc., 836 F.2d at 1193. The Court will not address  
whether the freedom of association protection applies in an extra-marital situation such as this because  
the Court finds that Michael Lucey's conduct did not end the relationship between Plaintiff and Duran.

1 registration check on Duran's vehicle. Id. at p. 16 and 112. According to Plaintiff, these  
2 actions, as well as overall surveillance and harassment by other police officers, violated her  
3 right to free association with Duran.

4 In this case, this Court finds that Michael Lucey is entitled to summary judgment on  
5 Plaintiff's constitutional claim of free association. Specifically, Plaintiff has failed to provide  
6 evidence that Michael Lucey's misconduct deprived her of her right to free association in this  
7 case because she maintained her relationship with Duran despite Michael Lucey's acts. The  
8 actions taken by Michael Lucey while acting as a police officer and checking on Duran's  
9 records were clearly improper. However, although Michael Lucey may have engaged in  
10 improper conduct to garner information about Duran, Plaintiff testified that her relationship with  
11 Duran ended because she was no longer in love with him. (Deposition of Danielle Marie  
12 Fargo, December 12, 2005, at p. 147-149, attached as Exhibit A-1 to City of Reno and Jerry  
13 Hoover's Motion for Summary Judgment (#147)). Further, Plaintiff testified that after her  
14 romantic relationship with Duran ended they remained friends. Id. at p. 151. As such,  
15 because Plaintiff was able to maintain her relationship with Duran, despite Michael Lucey's  
16 misconduct, her constitutional rights were not violated and her freedom of association claim  
17 must fail.

18 2. Unlawful Seizure of Conversation.

19 Plaintiff's claim for unlawful seizure of conversation against Michael Lucey relates to  
20 her claim against Defendant Sawyer for eavesdropping on her telephone conversations  
21 through the use of a baby monitor. (Amended Complaint (#75) at pp. 12-13). According to  
22 Plaintiff, "Michael solicited Deputy Sawyer, who lived two doors away from the Lucey  
23 residence in Sparks, Nevada, to keep [Plaintiff] under surveillance . . . principally via the use  
24 of electronic listening devices." (Opposition to Defendant Michael Lucey's Motion for  
25 Summary Judgment (#166) at p. 20).

26 As noted previously, the only factual support for this allegation is that Plaintiff saw a  
27 baby monitor in Sawyer's house and heard from a neighbor that Sawyer said he could hear  
28 Plaintiff's conversations. Plaintiff has provided no other evidentiary support for this claim.

1 Moreover, Plaintiff has provided no factual basis for her assertion that Michael Lucey solicited  
2 Sawyer to use his baby monitor to listen in on Plaintiff's telephone conversations. Because  
3 Plaintiff has not provided evidence to support her allegations under this claim, summary  
4 judgment is appropriate.

5 3. Unlawful Arrest.

6 This claim against Michael Lucey relates to the incident that occurred on March 15,  
7 2004, at the Badelona residence when Defendant Sawyer called the Sparks police department  
8 after seeing Duran at that residence. In regard to this claim, Plaintiff contends that "there is  
9 sufficient evidence from which a jury can properly infer that [Michael Lucey] solicited other  
10 officers to assist him in his domestic disputes with" Plaintiff. (Opposition to Defendant Michael  
11 Lucey's Motion for Summary Judgment (#166) at p. 21).

12 Plaintiff's argument is flawed, however, because she has failed to provide any evidence  
13 that she was arrested on March 15, 2004. As noted, Plaintiff was ordered to exit the house  
14 and to sit on the curb while the Sparks police department secured the scene. Because  
15 Plaintiff was not arrested, she has no claim for violation of section 1983 based on unlawful  
16 arrest. As such, Michael Lucey is entitled to summary judgment on this claim.

17 4. Remaining State Law Claims.

18 In addition to the foregoing constitutional claims for relief, Plaintiff has asserted various  
19 state law claims against Michael Lucey. These remaining state law claims are dismissed  
20 pursuant to 28 U.S.C. § 1367(c).

21 Based on the foregoing, Michael Lucey's Motion for Summary Judgment is granted as  
22 to all federal claims alleged against him. All remaining state law claims are dismissed.

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**III. CONCLUSION**

For the foregoing reasons, IT IS HEREBY ORDERED that Defendant Dennis Balaam's Motion for Summary Judgment (#138) is GRANTED.

IT IS FURTHER ORDERED that Defendant Greg Sawyer's Motion for Summary Judgment (#134) is GRANTED as to the constitutional claims asserted against him under 42 U.S.C. § 1983, as well as for the claims of conspiracy and trespass. All remaining claims are dismissed.

IT IS FURTHER ORDERED that Defendants City of Sparks, John Dotson and Unnamed Sparks Police Officers One and Two's Motion for Summary Judgment (#139) is GRANTED.

IT IS FURTHER ORDERED that Defendant Greg Martin's Motion for Summary Judgment (#140) is GRANTED as to the claims for free association, conspiracy and invasion of privacy. All remaining claims are dismissed.

IT IS FURTHER ORDERED that Defendants City of Reno and Jerry Hoover's Motion for Summary Judgment (#147) is GRANTED.

IT IS FURTHER ORDERED that Defendant Michael Lucey's Motion for Summary Judgment is GRANTED as to all constitutional claims asserted against him. All remaining claims are dismissed. The Clerk of the Court shall enter Judgment accordingly.

DATED: This 27<sup>th</sup> day of March, 2008.

  
UNITED STATES DISTRICT JUDGE